



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**CAUSE NO. 350 OF 2013**  
**DANIEL JUMA MAKOKHA..... CLAIMANT**  
**VERSUS**  
**FAST TRACK KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The suit was commenced vide a memorandum of claim dated 13<sup>th</sup> March 2013 and filed on 15<sup>th</sup> March 2013. The Claimant seeks;
  - i. one (1) month salary in lieu of notice in the sum of Kshs 94,500; and
  - ii. maximum compensation for unlawful dismissal in the sum of Kshs 1,350,000.
2. The claim is based on the evidence by the Claimant that he was employed by the Respondent on 1<sup>st</sup> January 2000 as an Accountant/Administrator at monthly gross salary of Kshs 50,000 per month.
3. The he served the Respondent diligently and with dedication until 21<sup>st</sup> December 2012 when his services were terminated.
4. That the Claimant was not given any reason for the termination, had no prior warning nor was he charged with any disciplinary offence. No notice to show cause was issued to him nor was he subjected to any disciplinary hearing.
5. In the letter of termination dated 12<sup>th</sup> December 2012 the managing director of the Respondent Mr Mustafa K. Rajani did not provide any reason for the termination. The Respondent did not offer to pay any termination benefits to the Claimant. Indeed the letter concluded thus;

*“ it was great working with you for almost 7 years but regret a sad day came to part with a colleague. My very best wished to you in your future with season’s greetings”*,

**Defence**

6. In the statement of defence dated 2<sup>nd</sup> April 2013, the Respondent states that the termination of the Claimant was lawful and fair. The Respondent avers that the Claimant was given one month notice but the letter dated 21<sup>st</sup> December 2012 simply asked the Claimant to utilize the leave days due for 2012 as the notice period.

7. The Respondent states further in the statement of defence that the Claimant exhibited indisciplined character by harassing other employees in the company and issuing threats to the Managing Director. This is not disclosed in the letter of termination.

8. The Respondent also states that it had already paid the claimant a sum of Kshs 349,588 vide cheque No. 09035 annexed to the statement of defence and marked Appendix 7. The Respondent accused the Claimant of failure to acknowledge the payment.

9. The Respondent did not call any witness in defence of its case.

### **Determination**

10. The Court notes that indeed a cheque of Kshs 349,588 was paid to the Claimant vide cheque No. 09035 dated 24.1.2013. This was before the suit was filed by the claimant. The Court also notes that the Claimant failed to disclose payment of this money in the statement of claim but did so during the hearing of the case.

11. The Claimant in his oral testimony told the Court that he sought payment of his salary for January 2013 in the sum of Kshs 66,150 and service gratuity for 7 years in the sum of Kshs 330,750 in addition to the claims made in the Memorandum of claim.

12. The Claimant did not seek payment of service gratuity nor payment of unpaid salary for the month of January 2013. These claims are clearly an afterthought and therefore untenable. The same are dismissed.

13. The Claimant is however entitled to payment of Kshs 50,000 in lieu of notice. The Claimant is also entitled to compensation for termination of employment without any valid reasons and without using a fair procedure contrary to section 45(1) & (2) of the Employment Act, 2007. The Court considers, following section 49 (4) of the Employment Act, that the Respondent made terminal payment of Kshs 349,588 to the Claimant though the Respondent did not explain for what purpose the payment was made.

14. The Court also notes that the employer provided a certificate of service to the Claimant to enable him get another job. The Claimant clearly wished to continue serving the Respondent and no evidence of adverse conduct or record was proved against him. The sudden loss of employment caused the Claimant loss and damage and the court in consideration of the above awards the claimant six (6) months' salary being compensation for the unlawful and unfair termination of employment in the sum of Kshs 300,000/=.

**The total award to the Claimant is Kshs 350,000**

15. The award is payable with interest at Court rates from the date of the Judgment. The Respondent in also to pay the costs of the suit.

**Dated and Delivered at Nairobi this 23<sup>rd</sup> day of October, 2015**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**